



Lamoine Board of Appeals

606 Douglas Hwy
Lamoine, ME 04605
(207) – 667-2242
town@lamoine-me.gov

Findings of Fact & Conclusions of Law

Doug Gott & Sons, Inc V. Lamoine Planning Board

Doug Gott & Sons, Inc. (Gott) appealed decisions by the Lamoine Planning Board (Planning Board) to deny a Site Plan Review Permit and a Gravel Permit to expand an existing pit from one lot of land onto an adjacent lot of land. Gott argues that the Planning Board misinterpreted two review criteria of the Site Plan Review Ordinance and two review criteria of the Gravel Ordinance.

We conclude that there was a misinterpretation on both review criteria of the Site Plan Review Ordinance and one review Criterion of the Gravel Ordinance, but uphold the decision of the Planning Board to deny the Gravel permit on the one review criterion upheld.

Each point of the appeal is dealt with separately as follow:

Site Plan Review – Section J 1

1. Section J of the Lamoine Site Plan Review Ordinance reads:

General Review Standards

The following criteria and standards shall be utilized by the board in reviewing applications for site plan review approval. The standards are not intended to discourage creativity, invention and innovation. The board may waive the criteria presented in this section upon a determination by the board that the criteria are not applicable to the proposed action or upon a determination by the board that the application of these criteria are not necessary to carry out the intent of this ordinance. The board shall approve the application unless the proposal does not meet the intent of one or more of the following criteria provided that the criteria were not first waived by the board.

1. Preserve and Enhance the Landscape.

The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, and retaining existing vegetation during construction. After construction is completed, landscaping shall be designed and planted that will define, soften or screen the appearance of the development and minimize the encroachment of the proposed use on neighboring land uses.

Environmentally sensitive areas such as aquifers, significant wildlife habitat, wetlands, steep slopes, floodplains, historic buildings and sites, existing and

potential archaeological sites and unique natural features will be maintained and preserved to the maximum extent.

2. The appellant presented a completed Site Plan Review application, and numerous parts of ordinance review Criterion J1 were addressed, including but not limited to a reclamation plan, landscaping and re-vegetation plan, and buffering and screening details.
3. The Planning Board voted 2-2 on this criterion. The tie vote is interpreted that the Planning Board did not find that this criterion was met.
4. The Planning Board did not resolve this tie vote, either with use of an alternate member or a revote.
5. The Planning Board has the right to impose conditions and/or to waive certain sections of the standard as not applicable. No conditions were proposed nor imposed.
6. No construction of a structure, per se, was proposed for this parcel.

Conclusions

The Board of Appeals, by a 3-2 majority, remands to the Planning Board, Section J1 of the Site Plan Review Ordinance with instruction to break the tie vote, and impose such conditions that may satisfy compliance with this section.

Voting in Favor: Fenton
Fowler
Bragdon

Voting in Opposition: Crotteau
Wuorinen

Site Plan Review Ordinance, Section J16

1. Review Criterion J 16 of the Site Plan Review Ordinance Reads:

"Comprehensive Plan.

The development shall be in conformance with the comprehensive plan."

2. Lamoine's Comprehensive Plan was passed by the Lamoine Town Meeting in 1996 and has not been updated or amended since that date.
3. The Comprehensive Plan Recommendations in regard to Land Use and Development reads:

The town shall adopt and periodically update an official land use map which designates areas suitable for growth and development, areas where the rural and agricultural characteristics of the community shall be preserved and enhanced, residential areas which shall be protected from strip development, areas which shall provide the community with marine access, and areas which shall provide protection for the town's natural resources.

4. The Comprehensive Plan recommendations also read:

The remainder of the town shall be classified Rural and Agricultural with rules similar to the current land use rules but more restrictive to commercial uses and encouraging to agricultural usage, permitting residential usage, including (but not limited to) bed and breakfasts, housing for the elderly, and nursing homes. This area would prohibit heavy industrial usages, quarrying and mining of all types but sand and gravel removal would still be permitted.

5. The Planning Board voted 5-0 that the application failed to be in conformance with the Comprehensive Plan in and issued findings that read:

Were a permit granted for this proposed pit, it would expand the sand and gravel extraction area yet further into land zoned essentially for residences, and radically change the topography of the parcel, including removal of trees and topsoil from portions of the lot, further despoiling the visual appeal of the area for years to come.

Conclusions

The Board of Appeals by a 3-2 majority finds that the Site Plan Review Ordinance, section J 16 requires that the Planning Board find that the project be in conformance with the Comprehensive Plan. The Planning Board voted unanimously and issued a finding that the project is not in conformance. The Comprehensive Plan is vague and confusing and potentially impossible to satisfy. The decision of the Planning Board is remanded with instruction to waive review criterion J16.

Voting in favor:	Fenton	Voting in Opposition:	Crotteau
	Fowler		Wuorinen
	Bragdon		

Notice of Decision

The Board of Appeals finds that the Planning Board has erred on both areas of contention in the Site Plan Review Ordinance and hereby remands the denial of a Site Plan Review Permit to the Planning Board. However, because the Gravel Ordinance decision is upheld, the Site Plan Review Permit remains denied.

Gravel Ordinance Section 7D (4)

1. Section 7D(4) of the Lamoine Gravel Ordinance reads:

The Planning Board shall approve or deny those applications on which it is empowered to act as stated, in this Ordinance. The Planning Board shall, after the submission of a complete application including all the information requested, and after review of the most recent Code Enforcement Officer compliance report and any other available enforcement information available with respect to the gravel pit in question, grant a permit if it makes a positive finding based on the information presented that the proposed operation:....

4. *Will conserve natural beauty in keeping with the restoration provisions of this ordinance.*
2. The Appellant presented a complete Gravel Permit Application which included a restoration plan.
3. The restoration plan contains the items required in Section 8D of the Lamoine Gravel Ordinance.
4. The Planning Board voted 3-2 that the application did not meet the provisions of section 7D(4)
5. The Planning Board has the right to impose additional conditions upon any permit approval. No conditions were proposed or attached to this decision.

Conclusions

The Board of Appeals by a 3-2 majority finds that the Planning Board misinterpreted Section 7D (4) of the Lamoine Gravel Ordinance. The appellant met its burden of providing a restoration plan in compliance with section 8D of the Lamoine Gravel Ordinance.

Voting in Favor:	Fenton	Voting in Opposition:	Crotteau
	Fowler		Wuorinen
	Bragdon		

Gravel Ordinance Section 7D (6)

1. The Lamoine Gravel Ordinance, section 7D(6) reads, using the same preamble above:
 6. *Will not adversely affect surrounding properties.*
2. The Planning Board voted 3-2 that the application did not meet the above referenced review criterion.
3. The Planning Board findings read as follows:

In short, the 'gain' to the applicant does not outweigh the loss to neighbors and residents of the town.

Citizen testimony and the failure of the applicant to justify the need for a gravel pit in this location convinced the majority of the Planning Board that the proposal would adversely affect surrounding properties.

Conclusions

The Board of Appeals by a 4-1 majority finds that there clearly will be an adverse impact to nearby residential properties due to the proximity and activity associated with gravel extraction. The Planning Board did not misinterpret section 7D (6) of the Lamoine Gravel Ordinance

Voting in Favor:

Fenton
Crotteau
Wuorinen
Bragdon

Voting in Opposition: Fowler

Notice of Decision

The Lamoine Board of Appeals hereby notifies the Appellant and the Lamoine Planning Board that based on the above findings of fact and conclusions of law the Gravel Extraction Permit remain denied.

Parties may appeal this decision to Superior Court within 45-days of the date of this decision.

Ordered this 10th day of May, 2011 by:

/s/ Hancock "Griff" Fenton, Chair

/s/ James Crotteau

/s/ John Wuorinen

/s/ Jay Fowler

/s/ Merle Bragdon

The Lamoine Board of Appeals